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Minutes of the 118th meeting of the Board of the EHRC

14 May 2024 (12:45 to 17:30)
9th floor, Windsor House, 50 Victoria Street, London SW1H 0TL

Attending

Commissioners

Kishwer Falkner (Chairwoman), Lesley Sawers (Interim Deputy Chair), Jess Butcher, Joanne Cash, David Goodhart, Alasdair Henderson, Kunle Olulode, Akua Reindorf (V), Su-Mei Thompson

Officers

John Kirkpatrick, Deputy Chief Executive
Cath Denholm, Chief Operating Officer (V)
Moya Alcock, Director of Communications
Cihan Altan, Chief of Staff
Bill Malloy, Director of Finance, Governance and Planning
Victoria Mearns, Interim Board Secretary
Amanda Topham, Head of Corporate Law and Information Governance
Beverley Reid, Head of Business Improvement (item 12)

Guests

Helen Anderson, Government Equality Hub
Charles Ramsden

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees to the meeting.

1.2 Apologies were received from the Acting Wales Commissioner.

2. Declarations of interest

2.1 The Scotland Commissioner declared an interest as the Director of GenAnalytics, who are working with the Scottish Government on the Festival of Ageing.

2.2 The People and Workspaces Committee (P&WC) Chair declared that she will be sitting on a panel for the Inclusion at Work Report.

3. Minutes of the 117th Board meeting, 27 March Special Board meeting and 17 April Special Board meeting

3.1 The Board approved the minutes of the meeting of 20 March 117th Board meeting as an accurate record, subject to minor terminology amendments.

3.2 The Board approved the minutes of the 27 March Special Board meeting.

3.3 The Board approved the minutes of the 17 April Special Board meeting.

4. Actions Arising

4.1 The Board noted the action log.

4.2 The Chairwoman advised she is content that items on the action log are in hand and will be covered at this or future meetings.

5. Decisions by Correspondence

5.1 Commissioners had been asked via correspondence to approve the final draft response to the Scottish Government's consultation on ending conversion practices in Scotland. Five Commissioners, including the Chairwoman, responded with their support for the proposed regulatory action. Four Commissioners did not comment. The response was sent on 2 April 2024.

6. Committee and Commissioner Working Group updates

6.1 The Board noted the Committee and Commissioner Working Group update papers.

6.2 The Scotland Commissioner drew attention to the minutes of the 22 April 2024 Special Scotland Committee meeting, advising that the views of the Committee are now consistent with those of the Board on clarifying the definition of ‘sex’ in the Equality Act.

7. TIAA Management of Legal Costs Report

7.1 The ARAC Chair introduced a report by the EHRC’s internal audit service provider, TIAA, following their review of the financial control, efficiency and management of corporate legal expenses incurred during the 2023 investigation into concerns raised against the Chairwoman.

7.2 The ARAC Chair said that ARAC had considered the report at their last meeting, which had not been quorate, and had been concerned. The report thoroughly covered processes and controls, found some deficiencies and made recommendations for improvement. ARAC fully accepted the report’s findings and recommendations that significant and urgent action should be taken immediately to strengthen controls.

7.3 ARAC members present had felt that management conversations focused on lessons learned and individual development would be a proportionate response to the findings.

7.4 [Redacted due to confidentiality].

7.5 Summing up, the Board was deeply concerned by the report’s findings, and agreed that implementing the recommendations of the internal auditors’ report, while necessary, was not enough.

7.6 The Board agreed that the evidence from the report needed to be used in appropriate and documented performance management discussions with those staff involved. Delegation to the Chief Executive for conduct and discipline of the leadership team (revoked on 23 November 2023) should be restored in order to facilitate this.

7.7 Any further proportionate action would be determined in the light of those discussions.

8. Governance Review

8.1 The Chairwoman introduced the external governance reviewer. Commissioners noted their thanks for the comprehensive report.

8.2 The reviewer provided a brief summary of his report, noting that it provides a set of recommendations as well as draft text for the code of conduct. Commissioners welcomed the recommendations from the report, advising that this will be a substantial piece of work which the Board will take forward with alacrity.

8.3 The Chairwoman queried how the Commission should express in its governance manual that any remedial action recommended to the Secretary of State should be reserved to the Board. The reviewer advised that this has been written into his revised annex on dispute procedure and recommended that this be included in the staff code of conduct.

8.4 The Chairwoman noted that the Board may seek further advice from the reviewer if they require clarity on any specific point, which he advised he is happy to provide.

9. CEO Report and Chairwoman's update

9.1 The Board noted the CEO report and agreed to:

a) Approve the appointment of two new Wales Committee members for a period of three years.
b) Approve in principle securing serviced offices on 140 West George Street, Glasgow.

9.2 The Interim CEO expressed his thanks to the Commissioners who sat on the SCA review panel, commending their performance.

9.3 The Interim CEO advised that the Commission is in a position to commence enforcement action against the Department for Work and Pensions (DWP) and that draft terms of reference have been sent to the Secretary of State and legal advisors at the DWP. Due to the significant commitment this work would require he asked the Board to confirm the two strands of the work: an Equality Act investigation into suspected unlawful acts, and an assessment of compliance with the Public Sector Equality Duty (PSED) while conducting work capability assessments for disabled people.

9.4 Commissioners agreed that this is an important and worthwhile piece of work. Some concerns were raised relating to cost implications. The Director of Finance, Planning and Governance advised that the cost of the work is high relative to the delivery budget. The Interim CEO said the cost had been accounted for in the published 2024-25 Business Plan and expenditure could be controlled.

9.5 The Board agreed that enforcement activity against the DWP should commence providing they are kept apprised of project milestones and ongoing feasibility.

ACTION: Clear milestones and a narrative for keeping the Board apprised to be developed for the DWP investigation.

9.6 Commissioners recalled that lessons learned reports were produced for previous Section 20 investigations. The Chairwoman asked that these be circulated to the Board.

ACTION: Circulate Section 20 lessons learned reports to the Board.

10. Annual risk report 2023/24 & strategic risk register and appetite 2024/25

10.1 The Chairwoman welcomed the Head of Business Improvement.

10.2 Commissioners noted the extensive work done by the Head of Business Improvement. The following comments were made:

a) Language in the register should be neutral, factual and objective;
b) risks should be consolidated to prevent repetition; and
c) a trend analysis or summary sheet could demonstrate the management and mitigation of risks.

ACTION: Risk register to return to a future Board meeting for approval.

10.3 The P&WC Chair offered to work on the register.

11. AOB

11.1 The Board noted the Forward Schedule.

11.2 The Chairwoman advised that the next Board meeting will be held in person on 19 June in Cardiff.

11.3 The Chairwoman thanked Commissioner Henderson, Commissioner Thompson and the Scotland Commissioner for their performance at the SCA review panel, as well as all staff involved.